

1 Lawrence H. Meuers, Esq. (SBN 197663)  
2 Katy Koestner Esquivel, Esq. (Florida Bar No. 0159484)  
3 MEUERS LAW FIRM, P.L.  
4 5395 Park Central Court  
5 Naples, FL 34109  
6 Telephone: (239)513-9191  
7 Facsimile: (239)513-9677  
8 lmeuers@meuerslawfirm.com

9 Attorneys for Plaintiff

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 NATURAL SELECTION FOODS, LLC  
14 dba EARTHBOUND FARMS,

15 Plaintiff,

16 vs.

17 RIVER RANCH FRESH FOODS, LLC.,

18 Defendant.

Case No.:

C07 02548 HRL  
BY FAX

19 CIVIL ACTION COMPLAINT

20 For its Complaint, Plaintiff respectfully states as follows:

21 THE PARTIES

22 1. Plaintiff is Natural Selection Foods, LLC dba Earthbound Farms  
23 ("Earthbound"), a California limited liability company with its principal place of  
24 business located at 1721 San Juan Highway, San Juan Bautista, California.

25 2. Plaintiff is engaged in the business of buying and selling wholesale  
26 quantities of perishable agricultural commodities (hereafter "Produce") in interstate  
27 commerce.

28 3. Defendant is River Ranch Fresh Foods, LLC. (the "Defendant" or "River  
Ranch"). Upon information and belief, River Ranch is a Delaware limited liability  
company with its principal place of business located at 1156 Abbott Street, Salinas,

1 California. Upon information and belief, the Defendant was and is at all times  
2 pertinent herein, a dealer and commission merchant subject to the provisions of the  
3 Perishable Agricultural Commodities Act, 1930, 7 U.S.C. §§499a-499t (the "PACA").

4 JURISDICTION AND VENUE

5 4. The District Court has jurisdiction over this civil action arising under  
6 §5(c)(4) of the PACA, 7 U.S.C. §499e(c)(4), pursuant to 28 U.S.C. §1331. The Court has  
7 supplemental jurisdiction over Plaintiff's other claims pursuant to 28 U.S.C. §1367(a).

8 5. Venue in this District is based on 28 U.S.C. §1391(b) because a  
9 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in  
10 this district, and a substantial part of the property that is the subject of this action is  
11 situated in this district.

12 BACKGROUND FACTS

13 6. At all times relevant to this action, River Ranch was a commission  
14 merchant, dealer or broker operating subject to the provisions of the PACA.

15 7. Between July 18, 2006 and September 15, 2006, Plaintiff sold to River  
16 Ranch in interstate commerce, and River Ranch purchased from Plaintiff, Produce in  
17 the total amount of \$230,050.65.

18 8. Plaintiff delivered the produce to River Ranch and River Ranch accepted  
19 the Produce from Plaintiff. The Produce sold by Plaintiff to River Ranch consisted of  
20 pre-packaged blends of various types of greens, including spinach.

21 9. All Produce shipped by Plaintiff between August 29, 2006 and  
22 September 15, 2006 containing spinach was voluntarily recalled by Plaintiff.

23 10. Plaintiff instructed its customers, including River Ranch, to dump all  
24 inventory which contained the recalled Produce.

25 11. Plaintiff also issued a credit to River Ranch and its other customers for  
26 the invoice price of the dumped Produce, dump fees, freight fees and reasonable  
27 administrative costs.

28 12. Plaintiff required its customers to provide documentary proof of all

1 dumped product in compliance with 7 C.F.R. §46.23.

2 13. The average credit requested by Plaintiff's customers as a result of the  
3 recall was between 40% and 60% of the invoice price.

4 14. In an effort to maintain an amiable relationship with Defendant, Plaintiff  
5 issued a credit to Defendant of 100% of all sales orders within the recall period in the  
6 amount of \$103,350.50.

7 15. Defendant has failed to pay the balance due after application of the  
8 \$103,350.50 credit, and has failed to supply the proof of the disposition of the recalled  
9 Produce in compliance with 7 C.F.R. §46.23.

10 CLAIMS FOR RELIEF

11 COUNT I.

12 DECLARATORY RELIEF VALIDATING PACA TRUST CLAIM

13 7 U.S.C. § §499e(c)(3) and (4)

14 16. Plaintiff re-alleges ¶¶ 1 through 15 as if stated herein.

15 17. Pursuant to PACA, 7 U.S.C. §499e(c), at the time of River Ranch's receipt  
16 of the Produce, River Ranch became trustee of the PACA trust for the benefit of  
17 Plaintiff in the amount of \$126,700.00. The PACA trust consists of all River Ranch's  
18 inventories of Produce, food or products derived from Produce ("Products"), accounts  
19 receivable and other proceeds of the sale of Produce or Products, and assets  
20 commingled or purchased or otherwise acquired with proceeds of such Produce or  
21 Products (assets subject to the PACA Trust are hereinafter referred to as "PACA Trust  
22 Assets")

23 18. Plaintiff gave written notice of intent to preserve trust benefits to River  
24 Ranch in accordance with the PACA Amendments of 1995 by including the statutory  
25 trust language, as set forth in 7 U.S.C. §499e(c)(4), on each of its invoices and by  
26 sending those invoices to River Ranch.

27 19. Pursuant to PACA, 7 U.S.C. §499e(c), Plaintiff is an unpaid supplier and  
28 seller of Produce, and is entitled to PACA trust protection and payment from River

1 Ranch's PACA Trust Assets.

2 20. Plaintiff seeks the entry of an Order declaring that it is a PACA trust  
3 beneficiary of River Ranch with a valid PACA trust claim in the amount of  
4 \$126,700.00, plus interest from the date each invoice became past due, costs and  
5 attorneys' fees.

6 **COUNT II.**

7 **ENFORCEMENT OF PAYMENT FROM PACA TRUST ASSETS**

8 **7 U.S.C. §499e(c)(5)**

9 21. Plaintiff re-alleges ¶¶ 1 through 20 as if stated herein.

10 22. River Ranch is in possession, custody and control of PACA Trust Assets  
11 for the benefit of Plaintiff and other similarly situated PACA trust beneficiaries.

12 23. River Ranch failed to pay Plaintiff for the shipments of Produce listed  
13 above at ¶7 from the PACA Trust Assets.

14 24. As a direct result of River Ranch's failure to promptly pay Plaintiff,  
15 Plaintiff suffered damages that are covered under the PACA trust in the amount of  
16 \$126,700.00, plus interest from the date each invoice became past due, costs and  
17 attorneys' fees.

18 25. Plaintiff seeks the entry of an Order directing River Ranch to  
19 immediately turn over to the Plaintiff, as a beneficiary of this trust, an amount of the  
20 PACA Trust Assets equal to the sum of \$126,700.00, plus interest from the date each  
21 invoice became past due, costs and attorneys' fees.

22 **COUNT III.**

23 **VIOLATION OF THE PACA: FAILURE TO MAINTAIN PACA**

24 **TRUST ASSETS AND CREATION OF COMMON FUND**

25 **7 U.S.C. §499b(4)**

26 26. Plaintiff re-alleges ¶¶ 1 through 25 as if stated herein.

27 27. River Ranch received each of the shipments of Produce identified in ¶7  
28 above.

29. PACA requires River Ranch, as a PACA trustee, to hold its PACA Trust Assets in trust for the benefit of Plaintiff and all other unpaid suppliers of Produce until all such suppliers have received full payment.

30. River Ranch has failed to maintain sufficient trust assets to fully satisfy all qualified PACA trust claims including Plaintiff's asserted herein.

31. As a direct result of River Ranch's failure to properly maintain and protect the PACA Trust Assets from dissipation, Plaintiff has suffered damages which are covered under the PACA trust in the amount of \$126,700.00, plus interest from the date each invoice became past due, costs and attorneys' fees.

32. Plaintiff seeks entry of an Order creating a common fund from which all PACA trust beneficiaries may be paid by directing River Ranch to maintain PACA Trust Assets equal to the sum of \$126,700.00, plus the claims of all other unpaid suppliers of Produce that properly preserved their PACA trust claims, directing River Ranch to replenish the PACA trust to a level sufficient to satisfy all qualified PACA trust claims, and enjoining River Ranch from dissipating PACA Trust Assets.

8 COUNT IV.

9 **VIOLATION OF PACA: FAILURE TO PAY PROMPTLY**

0 7 U.S.C. §499b(4)

1 33. Plaintiff re-alleges ¶¶ 1 through 32 as if stated herein.

2           34.     River Ranch received each of the shipments of Produce identified in ¶7  
3 above.

35. PACA requires all commission merchants, dealers, or brokers to make full payment promptly to its unpaid suppliers of Produce within the time set forth by 7 C.F.R. §46.2(aa).

7 | 36. River Ranch failed to pay these invoices within the payment terms.

8 37. As a direct result of River Ranch's failure to pay for each invoice within

1 terms, Plaintiff has incurred damages in the amount of \$126,700.00, plus interest from  
2 the date each invoice became past due, costs and attorneys' fees.

3 38. Plaintiff seeks entry of an Order directing River Ranch to immediately  
4 pay Plaintiff the sum of \$126,700.00, plus interest from the date each invoice became  
5 past due, costs and attorneys' fees.

6 COUNT V.

7 BREACH OF CONTRACT

8 39. Plaintiff re-alleges ¶¶ 1 through 38 as if stated herein.

9 40. Plaintiff and River Ranch entered into contracts under which Plaintiff  
10 agreed to sell the Produce and River Ranch agreed to purchase the Produce, each of  
11 which is described in ¶7 above.

12 41. River Ranch breached its contracts with Plaintiff by failing to pay for  
13 each shipment of Produce.

14 42. As a direct result of River Ranch's breach of contract, the Plaintiff has  
15 incurred damages in the amount of \$126,700.00, plus interest from the date each  
16 invoice became past due, costs and attorneys' fees.

17 43. Plaintiff seeks entry of an Order entering judgment in favor of Plaintiff  
18 and against River Ranch in the amount of \$126,700.00, plus interest from the date each  
19 invoice became past due, costs and attorneys' fees.

20 FOR THESE REASONS, Plaintiff respectfully requests the entry of an Order  
21 providing as follows:

- 22 i. As to Count I, declaring that Plaintiff is a PACA trust beneficiary of River  
23 Ranch with a valid PACA trust claim in the amount of \$126,700.00, plus  
24 interest from the date each invoice became past due, costs and attorneys'  
25 fees;
- 26 ii. As to Count II, directing River Ranch to immediately turn over to the  
27 Plaintiff, as a beneficiary of this trust, an amount of the PACA Trust Assets  
28 equal to the sum of \$126,700.00, plus interest from the date each invoice

- 1 became past due, costs and attorneys' fees;
- 2 iii. As to Count III, directing River Ranch to maintain PACA Trust Assets equal
- 3 to the sum of \$126,700.00, plus the claims of all other unpaid suppliers of
- 4 Produce that properly preserved their PACA trust claims, enjoining River
- 5 Ranch from dissipating PACA Trust Assets and directing River Ranch to
- 6 replenish the PACA trust to a level sufficient to satisfy all qualified PACA
- 7 trust claims;
- 8 iv. As to Count IV, directing River Ranch to immediately pay Plaintiff the sum
- 9 of \$126,700.00, plus interest from the date each invoice became past due,
- 10 costs and attorneys' fees;
- 11 v. Enter Final Judgment in favor of Plaintiff and against River Ranch on
- 12 Counts I through V, in the amount of \$126,700.00, plus interest from the
- 13 date each invoice became past due, costs and attorneys' fees; and
- 14 vi. Providing such other and further relief as the Court deems appropriate
- 15 upon consideration of this matter.

16 Respectfully submitted on Monday, May 14, 2007.

17 MEUERS LAW FIRM, P.L.

18 By: Lawrence H. Meuers

19 Lawrence H. Meuers, Esq. (SBN 197663)

20 Katy Koestner Esquivel, Esq. (Florida Bar No. 0159484)

21 5395 Park Central Court

22 Naples, Florida 34109

23 Telephone: (239) 513-9191

24 Facsimile: (239) 513-9677

25 lmeuers@meuerslawfirm.com

26 kesquivel@meuerslawfirm.com

27 Attorneys for Plaintiff

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